

**IN THE
SUPREME COURT OF MISSOURI**

No. SC83863

HOME BUILDERS ASSOCIATION OF GREATER ST. LOUIS

Respondent,

v.

STATE OF MISSOURI, ET AL.,

Appellants.

**Appeal from the Cole County Circuit Court
The Honorable Thomas J. Brown, III, Judge**

APPELLANTS' REPLY BRIEF

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POINTS RELIED ON

I

The circuit court erred in finding SB 894 unconstitutional because the plaintiff has standing only by the title insurance portions of the bill and the inclusion of those provisions in SB 894 did not violate MO. CONST. art. III, § 21 or art. III, § 23.

Shannon v. Hines, 21 S.W.3d 839 (Mo. App. 1999)

State ex rel. Mathewson v. Board of Election Commissioners of

St. Louis County, 841 S.W.2d 633 (Mo. banc 1992)

State ex rel. Williams v. Mauer, 722 S.W.2d 296 (Mo. banc 1986)

II

The circuit court erred in finding SB 894 violated the clear title mandate of MO. CONST. art. III, § 23 because the title, “relating to property ownership,” is a clear title in that all provisions related to the ownership, regulation, or disposition of real property.

Blue Cross Hospital Service, Inc. of Missouri v. Frappier,

681 S.W.2d 925 (Mo. banc 1984)

Fust v. Attorney General for the State of Missouri, 947 S.W.2d 424

(Mo. banc 1997)

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III

The circuit court erred in finding SB 894 violated the change of purpose provisions of MO. CONST. art. III, § 21 because the purpose of SB 894 did not change in contravention of the Missouri Constitution in that it began as a bill relating to the ownership, regulation, or disposition of real property and remained a bill relating to the ownership, regulation, or disposition of real property.

Americans United v. Rogers, 538 S.W.2d 711 (Mo. banc),
cert. denied, 97 S.Ct. 653, 429 U.S. 1029,
50 L.Ed.2d 632 (1976)

Stroh Brewery Company v. State, 954 S.W.2d 323 (Mo. banc 1997)

Allied Mut. Ins. Co. v. Bell, 185 S.W.2d 4 (Mo. 1945)

Missouri State Medical Association v. Missouri Department of Health,
39 S.W.3d 837 (Mo. banc 2001)

STANDARD OF REVIEW

In reviewing the entry of summary judgment, this court reviews the record *de novo* in the light most favorable to the nonmoving party. *ITT Commercial Financial Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371 (Mo. banc 1993).

Statutes are presumed to be constitutional. *Westin Crown Plaza Hotel Company v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984). In reviewing a statute against a constitutional challenge, this court is to construe any doubts regarding that statute in favor of its constitutionality. *Id.* Unless an act “clearly and undoubtedly” violates any of the above constitutional limitations, that act shall be upheld. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994).

ARGUMENT

Introduction

In the state's initial brief, the state demonstrated that the circuit court erred in ruling SB 894 unconstitutional. First, the court allowed Home Builders Association of Greater St. Louis, hereinafter Home Builders, to challenge parts of SB 894 to which it had no cognizable, legal interest. When the provisions of SB 894 to which Home Builders does have an interest are compared to the originally introduced provisions, the enacted bill withstands the challenge made by Home Builders. A review of general standards for MO. CONST. art. III, § 21 or § 23 challenges, as pronounced by this Court, results in an unalterable conclusion that provisions of the bill Home Builders is authorized to challenge are constitutional. Second, even if Home Builders has standing to challenge the other provisions of SB 894, the bill remains constitutional based upon those same standards.

In its brief, Home Builders ignores, avoids, or mischaracterizes the holdings of this Court in Home Builders' tautological arguments. More troubling, Home Builders makes numerous attacks against the general assembly which are not supported by the record before this Court. The only conclusion that can be reached is that the ad hominem attacks are an attempt to dissuade this Court from applying its previous case law for such challenges.

Upon review of the record, this Court should reverse the judgment below and direct the circuit court to enter a judgment finding SB 894 constitutional.

I

The circuit court erred in finding SB 894 unconstitutional because the plaintiff has standing only by the title insurance portions of the bill and the inclusion of those provisions in SB 894 did not violate MO. CONST. art. III, § 21 or art. III, § 23.

A careful reading of Home Builders' brief reveals that it did not disclose, either in the court below or in its brief to this Court, any cognizable, legal interest in any of the provisions of SB 894 other than those related to title insurance. Home Builders attempts to refute the state's argument by claiming, incorrectly, that the state provided no case law to support the proposition that Home Builders can only challenge those provisions of SB 894 to which it has standing to challenge. *See* respondent's brief page 24. In comparison, Home Builders cites no precedent for its proposition that it can pursue a claim for which it does not have a cognizable, legal interest.

Standing is a fundamental prerequisite to initiate litigation and is a jurisdictional matter. *Shannon v. Hines*, 21 S.W.3d 839 (Mo. App. 1999). In fact, standing is such an important concept that the failure of a party to have requisite standing can be raised for the first time on appeal. *State ex rel. Mathewson v. Board of Election Commissioners of St. Louis County*, 841 S.W.2d 633 (Mo. banc 1992). The plaintiff must have been injured or threatened with injury by the government action complained of and must be the proper party to raise the issue, in that a party cannot challenge the constitutionality of a statute unless it is adversely affected by it. *State ex rel. Williams v. Mauer*, 722 S.W.2d 296 (Mo. banc 1986).

The only standing asserted by Home Builders is that of associational standing on behalf of its members in that the members purchase title insurance and, therefore, have an interest in its availability and price of such insurance. The importance of that interest to Home Builders is demonstrated by the fact that it was made part of a supplemental stipulation of facts. L.F. 194. In paragraphs 2 and 3 of its petition, it asserts that its members purchase title insurance and have a vital interest in the availability, sale, and price of title insurance coverage. L.F. 6-7. At no time did Home Builders assert any other basis for standing. For example, Home Builders did not assert on its behalf or on its members' behalf taxpayer standing.

Having established that Home Builders only has asserted an interest in the availability and pricing of title insurance, it then is a simple matter to conclude that the title insurance portions of SB 894 are the only provisions that it has legal standing to challenge. When comparing those provisions to the originally introduced provisions of SB 894, the bill does not violate either MO. CONST. art. III, § 21 or § 23.

Home Builders ignored the relationship described in the state's initial brief between title insurance and the sale of property through sheriff's sales. *See* appellant's initial brief pages 15-16. That relationship established sufficient nexus between the sheriff's sales provisions of the introduced version of SB 894 and the enacted version involving title insurance.

Home Builders either does not understand the relationship between title insurance and sheriff's sales or chooses to ignore it. As shown in the initial brief, all holders of any interest in property must be given notice of a sheriff's sale. Section 140.150, RSMo 2000. Title

companies are utilized to undertake the search of the claims of title and provide title insurance. Because a common thread runs through sheriff's sales and title insurance, there was no constitutional violation in adding the title insurance provisions to a bill that started as one involving sheriff's sales.

II

The circuit court erred in finding SB 894 violated the clear title mandate of MO. CONST. art. III, § 23 because the title, “relating to property ownership,” is a clear title in that all provisions related to the ownership, regulation, or disposition of real property.

Statutes are presumed constitutional. *Blue Cross Hospital Service, Inc. of Missouri v. Frappier*, 681 S.W.2d 925 (Mo. banc 1984). The various provisions of a bill need not relate to each other but must relate to the subject of the entire bill. *Fust v. Attorney General for the State of Missouri*, 947 S.W.2d 424 (Mo. banc 1997). Whether the overarching purpose of the bill is the protection of those who have interests in property subject to sheriff's sales, or the broader purpose of the ownership, regulation, or disposition of real property, the bill as enacted meets the single subject, clear title, and original purpose requirements of the Missouri Constitution.

Although Home Builders cites the recent case of *C.C. Dillon Company v. City of Eureka*, 12 S.W.3d 322 (Mo. banc 2000), at a footnote at page 21 of its brief, it conveniently ignores the decision in that case. This Court in that case upheld a statute with a title "relating to transportation." That statute included such diverse provisions as permitting cites and

counties to enact more restrictive billboard regulation than the state has, establishing the Joint Committee on Transportation Oversight, deleting the requirement that highway patrol members' salary increases equal state merit employees, changing the organizational makeup and salaries of the Missouri Department of Transportation, creating a chief executive officer of the Missouri Highway and Transportation Commission, and changing audits of that commission. *C.C. Dillon* at 324-26. In *C.C. Dillon*, this Court reaffirmed the proposition that all benefit of doubt must be given to the constitutionality of a statute when challenged in the manner Home Builders has challenged SB 894.

At page 27 in footnote 2, Home Builders misstates the state's argument regarding the provisions of the Missouri Constitution and its references to "property." Home Builders asserts that the state argues that those provisions relate "solely to real property." A review of the state's initial brief discloses that the state demonstrated that each reference to "property" in the Constitution included "real property" and, in some instances, was the primary focus of the provision. See appellant's initial brief, pages 18-19. At no time did the state assert that "property" related "solely to real property" in the Constitution. However, because the Constitution uses the term "property," then that term is not too amorphous a term to use in the statutory context. See *Carmack v. Director, Missouri Department of Agriculture*, 945 S.W.2d 956 (Mo. banc 1997), for the proposition that in analyzing a clear title challenge the court will look to provisions of the Constitution for guidance.

Home Builders continues to misrepresent the state's argument at page 37 of its brief when it asserts that the state "argues that 'property' means only 'a piece of real estate.'" That

quote does not appear in the state's initial brief. Nevertheless, "property" does include "real property" as shown in the state's initial brief. When alternative readings of a bill are available, the court must choose the reading that results in constitutionality. *Stroh Brewery Company v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997). Because "property" includes "real property" and the entire bill relates to the ownership, regulation, or disposition of real property, the circuit court erred in its findings that SB 894 was unconstitutional.

III

The circuit court erred in finding SB 894 violated the change of purpose provisions of MO. CONST. art. III, § 21 because the purpose of SB 894 did not change in contravention of the Missouri Constitution in that it began as a bill relating to the ownership, regulation, or disposition of real property and remained a bill relating to the ownership, regulation, or disposition of real property.

A party mounting a constitutional challenge bears a heavy burden. *American United v. Rogers*, 538 S.W.2d 711 (Mo. banc), *cert. denied* 97 S.Ct. 653, 429 U.S. 1029, 50 L.Ed.2d 632 (1976). Moreover, the statute must clearly and undoubtedly violate the Constitution. *Stroh Brewery Company v. State*, 954 S.W.2d 323 (Mo. banc 1997).

Home Builders does not contest the proposition that a challenge based upon a change of purpose has been sustained only once by this Court. *Allied Mut. Ins. Co. v. Bell*, 185 S.W.2d 4 (Mo. 1945). Home Builders asserts that the provisions of SB 894 involving the ownership, regulation, and disposition of real property changed the original purpose of SB 894. However, all the provisions of SB 894 as ultimately enacted dealt with these same broad

topics. Because of the strong presumption in favor of constitutionality, SB 894 should be found constitutional. *See, e.g., Westin Crown Plaza Hotel Company v. King*, 664 S.W.2d 2 (Mo. banc 1984) and *Missouri State Medical Association v. Missouri Department of Health*, 39 S.W.3d 837 (Mo. banc 2001).

Home Builders argues at page 42 of its brief that SB 894 as enacted violates the provisions of MO. CONST. art. III, § 21 regarding change of purpose because the provisions of the original bill were all in Chapter 141, while the enacted bill had provisions in several different chapters. However, that has never been the standard applied by this Court, as later conceded by Home Builders at page 48 of its brief.

The state takes exception to the unsupported and ad hominem attacks on the general assembly that primarily occur in the latter portions of Home Builders' brief. Examples appear at page 21, footnote 1 ("the General Assembly has shown a propensity to ignore constitutional provisions"), page 32 ("a blatant and cynical violation of procedural constitutional protections"), page 32 (referring to SB 894 as a "legislative curiosity"), page 43 ("SB 894 became a legislative vehicle intended to be used for every left-over, half baked legislative proposal that . . . could not, become law on its own merits"), page 51 (the general assembly was "audacious in its contempt for the procedural restrictions of the Missouri Constitution and demonstrates the General Assembly's breathtaking disregard for this Court's precedents"), and page 52 ("A flagrant disregard of and disrespect for the Missouri Constitution is manifested in SB894."). These attacks on the general assembly are unsupported by the record and appear

to be an attempt to appeal to emotion rather than studied analyses of SB 894 in the context of this Court's precedents.

CONCLUSION

The circuit court erred in allowing Home Builders to challenge those provisions of SB 894 of which it had no legal cognizable interest, thereby invalidating an entire bill to which only one portion did Home Builders have a right to challenge. Thus the court should reverse the judgment below and remand the circuit court to review only the provisions related to title insurance to determine their constitutionality and to direct the circuit court to find the remainder of SB 894 constitutional.

Alternatively, if this court determines that Home Builders had the right to challenge all the provisions of SB 894, the circuit court erred in finding that SB 894 was enacted in violation of the clear title, single subject, and change of purpose requirements of the Missouri Constitution in that all the provisions of the bill as enacted relate to real property. Under this alternative, the state respectfully requests this court to reverse the circuit court with directions to enter a judgment finding SB 894 constitutional.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned assistant attorney general hereby certifies that:

(1) The attached reply brief complies with the limitations contained in Special Rule 1(b) of this court in that it contains 2,827 words, excluding the cover, this certification, and any appendix, as determined by WordPerfect 9 software; and

(2) The floppy disk filed with this brief, containing a copy of this reply brief, has been scanned for viruses and is virus-free; and

(3) Two true and correct copies of the attached reply brief and a floppy disk containing a copy of this reply brief, were mailed, postage prepaid, this 10th day of January 2002 to:

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